

State of California
California Regional Water Quality Control Board
Santa Ana Region
June 10, 2010

ITEM: 8

SUBJECT: Order No. R8-2010-0022, Stipulation for Settlement of Administrative Civil Liability Complaints, City of Beaumont

On November 11, 2009 and April 15, 2010 the Assistant Executive Officer issued Administrative Civil Liability Complaints, Order No. R8-2009-0068 and Order No. R8-2010-0007 (Complaints), respectively, for alleged violations of State Water Resources Control Board Order No. 2006-0003-DWQ (Statewide General Waste Discharge Requirements for Sanitary Sewer Systems). The alleged violations are associated with the sewage spills to waters of the state described in the referenced Complaints (see attached Complaints).

Complaint No. R8-2009-0068 proposed the imposition of a penalty of \$99,900 and Complaint No. R8-2010-0007 proposed a penalty of \$ 111,000. In both cases, the City of Beaumont chose to waive its right to a hearing within 90-days of issuance of the Complaints and engaged Regional Board staff in negotiations to settle both Complaints.

The City agreed to waive its right to a hearing and settle both Complaints by paying 50% of the assessed penalties to the State Water Resources Control Board and by participating in a supplemental environmental project (SEP) for the remainder of the assessed penalty. The proposed SEP is to conduct an investigation of the impact of septic system use on groundwater quality in the Beaumont-Cherry Valley area and the study will be conducted by the University of California in Riverside. Order No. R8-2010-0022 formalizes the settlement agreements related to the two Complaints, including participation in the SEP project.

RECOMMENDATION

Regional Board staff recommends that the Board adopt Order No. R8-2010-0022, as proposed.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:

City of Beaumont	)	Administrative Civil Liability
550 E. 6 th Street	)	Order No. R8-2010-0022
Beaumont, CA 92223	)	Stipulation for
	)	Settlement of Administrative Civil Liability
	)	Complaints

A. INTRODUCTION:

1. This is an Administrative Civil Liability (ACL) Order (hereinafter Order) presented to the Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), for consideration. This Order accepts the stipulations for settlement (Agreement) of two ACL Complaints (hereinafter Complaints) issued by the Regional Board's Assistant Executive Officer to the City of Beaumont (hereinafter Discharger).

B. PARTIES TO THIS AGREEMENT:

2. Regional Board's Prosecution Team represented by Assistant Executive Officer
3. City of Beaumont (Discharger)
4. Regents of the University of California, represented by Dr. James O. Sickman, (SEP Proponent)

C. ACL COMPLAINTS BEING SETTLED:

5. ACL Complaint No. R8-2009-0068 issued on November 19, 2009 (Complaint No.1), Assessed Penalty: \$99,900 (Exhibit A)
6. ACL Complaint No. R8-2010-0007 issued on April 15, 2010 (Complaint No. 2), Assessed Penalty: \$111,000 (Exhibit B)

D. PROPOSED SETTLEMENT:

7. The Discharger agrees to settle the liabilities assessed in the two Complaints (total liability: \$210,900) in accordance with the following.
8. The Discharger to pay \$105,450 to State Water Resources Control Board-WDPF. This is the initial payment and it shall be mailed to the following address within 30 days of adoption of this Order:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

9. The Discharger to pay \$105,450 to Regents of the University of California for a Supplemental Environmental Project (SEP). This is the suspended liability payment and is also due within 30 days of adoption of this Order and shall be mailed to the address indicated in Item 2, above. A check for \$105,450 should be made payable to the Regents of the University of California. The suspended liability shall be deemed satisfied once the Discharger funds the SEP project and the SEP is completed by the SEP proponent in accordance with the schedule proposed in the SEP (Exhibit C).
10. Dr. James O. Sickman representing the Regents of the University of California at Riverside shall utilize the SEP allocation of \$105,450 as per the proposed budget in accordance with the schedule included in Exhibit C.

E. DEFINITIONS

“Designated Regional Board Representative”: The representative from the Santa Ana Regional Water Quality Control Board responsible for oversight of the supplemental environmental project (SEP). For this matter, the representative is: Dr. Cindy Li.

“SEP Proponent”: An independent third-party with whom the Discharger/Regional Board has contracted with or otherwise engaged to perform or implement the SEP. The SEP Proponent is: Dr. James O. Sickman, Associate Professor of Hydrology, Department of Environmental Sciences, University of California, Riverside.

“Milestone Requirement”: A requirement with an established time schedule for meeting/ascertaining certain identified measurements of completed work. Upon the timely and successful completion of each milestone requirement, an amount of liability will be permanently suspended or excused as set forth in the SEP proposal, Exhibit C.

“SEP Completion Date”: The date in which the SEP will be completed in its entirety.

F. TERMS AND CONDITIONS OF THE AGREEMENT:

11. Complaints No. 1 and 2 were issued to the Discharger for violating the California Water Code by discharging wastewater (sewage) to waters of the State. The Discharger waived its right to a hearing for both Complaints. The total assessed liability for both these Complaints is \$210,900.
12. The Discharger agrees to settle these Complaints by making an initial payment of \$105,450 to the State Water Resources Control Board-WDPF and by funding a SEP project for the suspended liability of \$105,450.

13. The SEP Proponent agrees to complete the SEP project as per the proposed budget and the schedule included in the SEP proposal, Exhibit C.
14. Upon adoption of this Order by the Regional Board, incorporating this Agreement, this Order represents a final and binding resolution and settlement of violations alleged in the Complaints against the Discharger and its subsidiaries, successors, assigns, and their officers, directors, employees, representative agents, and attorneys.
15. The Parties covenant and agree that they will not contest the Order before the State Water Resources Control Board, or any court.
16. The Parties agree that the procedure that has been adopted for the approval of the Agreement by the Parties, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
17. **Description of the SEP:** See Exhibit C.
18. **Deliverable Products from SEP:** See Exhibit C.
19. **Budget and Milestones:** See Exhibit C.
20. **Representations and Agreements by the SEP Proponent:** As a material consideration for the Regional Board's acceptance of this Order, the SEP Proponent represents that it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule in Exhibit C. The SEP Proponent understands that its promise to implement the SEP as described in Exhibit C, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Board. The SEP Proponent agrees that the Regional Board has the right to require the SEP Proponent to implement the SEP in accordance with the terms of this Order if it has received funds for that purpose from the Discharger. The SEP Proponent agrees to submit to the jurisdiction of the Regional Board to enforce the terms of this Order for purposes of implementation of the SEP.
21. The SEP Proponent represents to the Parties and to the Regional Board that the SEP Proponent will: 1) spend the SEP payment as described in the Order as per the project description in Exhibit C; and 2) provide a certified, written report to the Regional Board consistent with the terms of this Order detailing the implementation of the SEP. The SEP Proponent agrees that the Regional Board has the right to require an audit of the funds provided to it by the Discharger and expended by it to implement the SEP.
22. **Publicity:** Wherever the Discharger or its subcontractors or agents or the SEP proponent or its agents or subcontractors publicizes one or more elements of the SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Discharger.
23. **Public Notice:** The ACL Complaints, the SEP proposal and this Agreement and Order were publicly noticed at least for 30 days. All public comments received have been considered and responded to.

24. **Regional Board Staff Oversight Costs:** Regional Board staff does not anticipate any staff oversight costs for the proposed SEP.
25. **Submittal of Progress Reports:** The SEP Proponent shall provide quarterly progress reports to the Designated Regional Board Representative on the 15th day of the month following the quarter; the first quarterly report is due on: October 15, 2010.
26. **SEP Program Audit:** The SEP Proponent shall allow Regional Board staff to audit the SEP project without prior notice.
27. **Final Certification:** On or before November 1, 2011, the SEP Proponent shall submit certified statements by responsible corporate officials representing the SEP Proponent documenting the respective expenditures by the SEP Proponent to implement and to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The SEP Proponent shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify the SEP Proponent's SEP expenditures. The certification need not address any costs incurred by Regional Board staff for oversight. The final report shall include a certification, under penalty of perjury, stating that the SEP has been completed in accordance with the terms of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the SEP Proponent.
28. **CEQA Compliance:** The SEP Proponent shall provide a certification that the work performed on the SEP project met or exceeded the requirements of CEQA and other environmental laws, where applicable. This certification may be submitted with the final report on or before November 1, 2011. The CEQA documentation, if necessary, shall be submitted under penalty of perjury, stating that the SEP meets or exceeds the requirements of CEQA, if applicable, and or other environmental laws. The SEP Proponent shall, before the SEP implementation date, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the SEP Proponent shall provide the Regional Board with the following documents from the lead agency:
 - a) Categorical or statutory exemptions;
 - b) Negative Declaration if there are no "significant" impacts;
 - c) Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or

- mitigate those potential significant impacts;
d) Environmental Impact Report (EIR) if there are "significant" impacts.
29. **Third Party Audit:** If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the SEP Proponent has not expended money in the amounts claimed by the SEP Proponent, or has not adequately completed any of the work in the SEP proposal, as described in Exhibit C, the Designated Regional Board Representative, may require, and the SEP Proponent shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Regional Board providing such party(ies)'s professional opinion that the SEP Proponent has expended money in the amounts claimed by the SEP Proponent. In the event of such an audit, the SEP Proponent agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Water Board Representative within three (3) months of the completion of the SEP Proponent's SEP obligations. The audit need not address any costs incurred by the Regional Board staff for oversight.
30. **Regional Board's Acceptance of Completed SEP:** Upon the SEP Proponent's satisfaction of its obligations under this Order, the completion of the SEP and any audits, the Designated Water Board Representative, shall request that the Executive Officer issue a "Satisfaction of SEP Letter." The issuance of the Satisfaction of SEP Letter shall terminate any further obligations of the SEP Proponent and the Discharger under this Order.
31. **Failure to Expend All Suspended Liability on the Approved SEP Project:** In the event that the SEP Proponent is not able to demonstrate to the reasonable satisfaction of the Regional Board staff that it has spent the entire SEP Amount for the completed SEP, the SEP Proponent shall pay the difference between the SEP funds and the actual amount expended.
32. **Failure to Complete the SEP:** If the SEP is not fully implemented as per the schedule in Exhibit C or there has been a material failure to satisfy a Milestone Requirement, the Designated Regional Board Representative shall issue a Notice of Violation. As a consequence, the SEP Proponent shall be liable to pay the entire SEP funds or, some portion thereof less the value of the completion of any Milestone Requirements. Unless otherwise ordered, the SEP Proponent shall not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Designated Regional Board Representative. The amount of the SEP funds owed shall be determined via a "Motion for Payment of SEP Funds" before the Regional Board. Upon a determination by the Regional Board of the amount of the SEP funds, the amount owed shall be paid to the State Water Resources Control Board-WDPF within thirty (30) days after the service of the Regional Board's determination. In addition, the SEP Proponent shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees.

Payment of the suspended liability amount will satisfy the SEP Proponent's obligations to implement the SEP.

33. **Regional Board is not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the SEP Proponent or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by the SEP Proponent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.

The SEP Proponent and the Discharger covenant not to sue or pursue any administrative or civil claim or claims against the Regional Board, or its officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the administrative civil liability, this Order or the SEP project.

34. Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
35. The Executive Officer may extend any of the due dates in this Order upon the joint request of the Parties. Such extensions must be in writing.

36. The effective date of this Order shall be the date on which it is adopted by the Regional Board.

37. This Order relates only to administrative civil liability for violations that were alleged in the Complaints and the SEP proposal. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations that occur after the date on which the Assistant Executive Officer signed the Complaints.

38. In the event that this Order does not take effect because it is not adopted by the Regional Board or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: 1) objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections that are premised in whole or in part on the fact that

the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the alleged violations in this matter; or 2) laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

39. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.
40. This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
41. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be made in writing and approved by the Regional Board.
42. This Agreement may be executed by the parties and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED¹

Kurt V. Berchtold
Assistant Executive Officer
Regional Board

Date

Alan C. Kapanicas
For the City of Beaumont

Date

Dr. James O. Sickman, SEP Proponent

Date

¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE ACL COMPLAINTS, THE SEP PROPOSALS, AND THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Order, the Regional Board has considered all the factors prescribed in California Water Code section 13327. The Regional Board's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.
3. The foregoing Stipulation is incorporated into this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on June 10, 2010.

Gerard J. Thibeault
Executive Officer

Date

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:

City of Beaumont	)	Complaint No. R8-2009-0068
550 E. 6 th Street	)	for
Beaumont, CA 92223	)	Administrative Civil Liability
Attn: Alan C. Kapanicas)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Beaumont (hereinafter "Beaumont") is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter "Regional Board"), may impose administrative civil liability under California Water Code (hereinafter "CWC") §13350.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint, unless pursuant to CWC Section 13323, Beaumont waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on January 29, 2010, at the City Council Chambers, 25541 Barton Road, City of Loma Linda, California. Beaumont, or its designated representative, will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the meeting and the staff report relating to this item will be mailed to you not less than 10 days prior to the hearing date.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

4. Beaumont owns and operates one hundred thirty five (135) miles of gravity sanitary sewer main and fifteen (15) miles of sanitary sewer force main within its service boundary. The operation and maintenance of sanitary sewer systems are regulated under the State's General Waste Discharge Requirements for Sanitary Sewer

Systems, Water Quality Order No. 2006-0003 (hereinafter "SSO Order"). On November 2, 2006, Beaumont obtained coverage under the SSO Order.

5. Beaumont's sanitary sewer system normally contains wastewater from residential, commercial and industrial establishments. Untreated sanitary wastewater (sewage) generally contains high levels of bacteria, metals, nutrients and other pollutants.
6. A series of eight separate sanitary sewer overflow (SSO) incidents occurred between March and September 2009 from Beaumont's sanitary sewer system. This resulted in an estimated aggregate volume of 132,000 gallons of sewage being discharged (60,000 gallons of the spilled sewage were recovered) either into wetlands tributary to San Timoteo Creek or to un-named, ephemeral drainage courses tributary to San Timoteo Creek. Each of these incidents resulted in a discharge of sewage to waters of the United States. Sewage discharged to these un-named tributaries mostly percolated into the soils before reaching San Timoteo Creek. The overflow incidents were as follows:
 - a) On March 12, 2009, 30,000 gallons of raw sewage were spilled from the Western Knolls force main¹ located at 1400 Western Knolls Avenue. Approximately 10,000 gallons were recovered. The reported cause of the spill was a break in a force main.
 - b) On March 29, 2009, 50,000 gallons of raw sewage were spilled from the Western Knolls force main. Approximately 30,000 gallons were recovered. The reported cause of the spill was another failure in the same force main, as the March 12th break.
 - c) On April 2, 2009, 30,000 gallons of raw sewage were spilled from the Western Knolls force main from a third force main failure incident. Approximately 20,000 gallons were recovered.
 - d) On July 22, 2009, 5,000 gallons of sewage overflowed from the Western Knolls lift station as a result of a pipe failure within the dry well of the lift station that shorted out electrical service to the pumps. None of the sewage was recovered.
 - e) On August 18, 2009, 2,000 gallons of sewage overflowed from the Upper Oak lift station as a result of a failure from a pressure relief valve. None of the sewage was recovered.
 - f) On August 20, 2009, 2,000 gallons of sewage overflowed from the Upper Oak lift station as a result of a failure from a pressure relief valve. None of the sewage was recovered.
 - g) On September 2, 2009, 3,000 gallons of sewage overflowed from a manhole at Little Lower Oak lift station as a result of a blockage within the sewer line and discharged into a storm drain. None of the sewage was recovered.
 - h) On September 23, 2009, 10,000 gallons of sewage overflowed from a manhole just up gradient of Little Lower Oak lift station. The overflow was the result of a failure of the sewage lift station. All of the sewage was discharged to wetlands tributary to San Timoteo Creek. In both this spill incident and the September 2nd incident at the Little Lower light station, all of the sewage was discharged to waters of the United

¹ Force mains are pipelines that convey wastewater under pressure.

States due to the close proximity of a storm drain inlet that was tributary to the wetlands.

7. The discharges were either into wetlands tributary to San Timoteo Creek or to ephemeral, un-named tributaries of San Timoteo Creek, a water of the United States. The Basin Plan designates the following beneficial uses for the Creek: groundwater recharge, water contact recreation, non-contact water recreation, warm fresh water habitat and wildlife habitat.
8. Provision C. 1 of the SSO Order states, "Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." The above discharges were in violation of this provision of the SSO Order.
9. Provision D.1 of the SSO Order states, "The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action." Beaumont is alleged to have violated Provision C.1 of the SSO Order.
10. Pursuant to CWC §13350(e), the Regional Board may impose civil liability administratively either on a daily basis [per CWC §13350(e)(1)] or on a per gallon basis [per CWC §13350(e)(2)], but not both. The Assistant Executive Officer proposes to impose civil liability per CWC §13350 (e)(2).
11. CWC §13350(e)(2) states that administrative civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged. For the eight incidents described above, the total volume discharged and not recovered was 72,000 gallons. The maximum liability for the violations cited above on a per gallon basis is \$720,000 (72,000 gallons X \$10 per gallon = \$720,000).
12. CWC §13327 specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>Beaumont discharged an estimated 72,000 gallons of untreated wastewater (sewage) from its sanitary sewer system to either wetlands tributary to San Timoteo Creek or to ephemeral, un-named, tributaries to San Timoteo Creek. The discharge of sewage was from eight separate sanitary sewer overflows that occurred within a six month span of time.</p> <p>The sewage discharged to tributaries of San Timoteo Creek has</p>

	<p>the potential to impact the designated beneficial uses of the Creek by the introduction of bacteria, nutrients, and other pollutants. For incidents involving discharges to ephemeral tributaries, the nature of the soils allowed sewage to be absorbed before reaching San Timoteo Creek. However, the nutrients and some of the other pollutants in sewage, once deposited in the soil, have the potential to migrate through the soil column into the ground water or carried by storm water into other surface waterbodies. The discharge of sewage also causes a nuisance and is a threat to public health.</p> <p>Beaumont responded to the spill in a timely manner and was able to mobilize needed equipment and personnel to swiftly clear the blockages, repair the pump stations, etc. Moreover, Beaumont has accelerated its construction activities to replace the problematic 8" force main and accelerated its schedule for bringing on-line a new lift station (Mesa Lift Station) to address the problematic lift station.</p>
B. Culpability	<p>Beaumont has failed to develop and implement a comprehensive Sanitary Sewer Management Plan (hereinafter "SSMP") in compliance with the SSO Order. Regional Board staff has been working with Beaumont staff to bring the City into compliance with the SSO Order. Beaumont's failure to develop this plan as required by the SSO Order and its failure to take proactive steps to prevent SSOs may have contributed to failures of the force main and the lift stations. Repeated failures of the force main and the pump stations could have been prevented, or at least minimized, by proper operation and maintenance of the systems through development and implementation of a SSMP. Also, the number of sanitary sewer overflows, some of them from the same location, from March to September 2009 indicates a lack of responsiveness from the City.</p>
C. Economic Benefit or Savings	<p>The Regional Board staff has insufficient information to assess economic benefit. It appears that Beaumont delayed some of the capital improvement projects and benefitted monetarily from it. The exact cost benefit from this delay could not be ascertained.</p>

D. Prior History of Violations	<p>Beaumont reported two SSO incidents that were violations of the SSO Order prior to January 2009.</p> <p>Beaumont has also violated provisions of the Riverside County municipal storm water permit (of which they are a co-permittee). The Regional Board issued an administrative civil liability complaint for these violations.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 126 hours investigating this incident. The total cost for staff time is \$18,900 (126 hrsX\$150/hr=\$18,900).</p>
F. Ability to pay	<p>Beaumont is a city of more than 30,000 citizens. Pursuant to Water Code section 13385(k) it is not considered a small community with financial hardship and, therefore, it appears that Beaumont has the ability to pay the proposed administrative civil liability. The Prosecution Team is not in the possession of any information that Beaumont is unable to pay the proposed liability amount.</p>

13. After consideration of the above factors, the Assistant Executive Officer proposes that civil liability be imposed administratively on Beaumont in the amount of \$99,900 for the violations cited above.

14. This penalty assessment is based on a consideration of the potential for harm from the SSO events listed above. Based on the potential harm from the discharge and the characteristics of the discharge, the Assistant Executive Officer determined that an assessment of \$1.50 per gallon is appropriate. The total assessment based on flow is \$108,000 (72,000 gallonsX\$1.50/gallon=\$108,000). This amount is then adjusted based on Beaumont's culpability, cleanup effort and cooperation, and history of violations. As indicated in the table above, Beaumont appears to have had an inordinate number of overflow incidents that suggest a lack of proper operation and maintenance. A 0.75 adjustment factor is recommended based on consideration of Beaumont's prompt response activities, the fact that none of the discharges reached any flowing body of water, and the absence of any observable impacts on the beneficial uses from the discharges. Based on the foregoing, the 0.75 factor was used to adjust the amount calculated above resulting in an adjusted assessment of \$81,000 (\$108,000X0.75=\$81,000). CWC §13327 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. These costs are added to the final liability to determine the assessed civil liability for the alleged violation(s). No economic benefit has been assessed for Beaumont's eight overflow incidents. The costs of investigation and enforcement are considered as one of the "other factors

as justice may require". The staff costs (\$18,900) are added to the amount in the above paragraph, for a total assessment of \$99,900 (\$81,000+\$18,900=\$99,900).

WAIVER OF HEARING

Beaumont may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$99,900 payable to the State Water Resources Control Board-WDPF in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992 or Chuck Griffin at (951) 782-4996.

11/19/09
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer
Regional Board Prosecution Team

EXHIBIT B

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:

City of Beaumont	)	Complaint No. R8-2010-0007
550 E. 6 th Street	)	for
Beaumont, CA 92223)	Administrative Civil Liability
)	
Attn: Alan C. Kapanicas)	

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3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

4. Beaumont owns and operates one hundred thirty five (135) miles of gravity sanitary sewer main and fifteen (15) miles of sanitary sewer force main within its service boundary. The operation and maintenance of sanitary sewer systems are regulated under the State's General Waste Discharge Requirements for Sanitary Sewer

Systems, Water Quality Order No. 2006-0003 (hereinafter "SSO Order"). On November 2, 2006, Beaumont obtained coverage under the SSO Order.

5. Beaumont's sanitary sewer system normally contains wastewater from residential, commercial and industrial establishments. Untreated sanitary wastewater (sewage) generally contains high levels of bacteria, metals, nutrients and other pollutants.
6. Beginning on December 18 and continuing into December 19, 2009, an estimated 403,000 gallons of raw sewage were spilled from the Marshall Creek Lift Station to an un-named tributary to San Timoteo Creek. Approximately 300 gallons were recovered and returned to the sanitary sewer system. This resulted in an estimated 402,700 gallons of sewage being discharged to an un-named ephemeral drainage course tributary to San Timoteo Creek, a water of the United States. Subsequently the City submitted revised estimates of the discharge volume which indicated that the total discharge volume was approximately 200,000 gallons. The initial discharge volume estimates were based on the actual difference between the average discharge volume for the previous weeks and the week of the spill incident. Subsequent estimates were based on theoretical pump and wet-well capacities, pumping times and pump cycles, which could not be independently verified. As such, the initial estimates have been used for purposes of this Complaint. Most of the discharged sewage percolated into the soil within the un-named tributary.
7. The following information is based on investigations conducted by Regional Board staff and information provided by the City and its contractors operating the sanitary sewer system and the sewage treatment plant.
 - a. The City's sanitary sewer system and its sewage treatment plant are operated by Aquarion Operating Services (hereinafter "AOS", a wholly-owned subsidiary of United Water) under contract with the City. According to information provided by the City, AOS is responsible for operation and maintenance of the City's sewage treatment plant and the sanitary sewer collection system, including the lift stations. However, AOS has indicated that it had not accepted full responsibility for operation and maintenance of some of the lift stations and sewage collection systems. The City is responsible for repair and replacement of equipment, such as the pumps and the electrical systems.
 - b. Marshall Creek lift station is a sewage pump station for pumping sewage into the force main sewer system for delivery to the sewage treatment plant. This lift station has a level alarm which sends an alarm to the SCADA system (Supervisory Control and Data Acquisition, an electronic monitoring system) located at the sewage treatment plant when the level of wastewater in the wet well exceeds a preset level. The SCADA system also receives continuous information regarding the wastewater levels in the wet wells from remote locations, such as the Marshall Creek lift station. The City's SCADA system has an operator screen and an alarm

screen. Generally a level alarm would be displayed in both systems and is an indication of a non-functioning pump or other malfunctions at the lift station.

- c. The Marshall Creek lift station was equipped with dual pumps and dual power supply sources. When the primary operating system fails, the lift station should automatically switch to the alternate (standby) system. On December 18, 2009, both pumps at the Marshall Creek lift station failed either due to an electrical failure or due to mechanical problems with the pumps.
- d. According to information provided by the City, both pumps at the lift station were tested and were found to be functional prior to the December 18th incident. However, the City stated that the spare pump was known to have problems, but functioned properly in the test mode. On December 18, 2009, the operating pump failed due to a seal problem. When this happened, the system failed to switch to the standby pump. Information provided by AOS indicated that the second pump may have failed on December 18, 2009 due to preexisting mechanical problems; the City claims that the failure was due to an electrical failure. In any case, on December 18, 2009, both pumps failed, both electrical systems failed, and the alarm sensor switch failed. These failures at the lift station triggered an alarm at the SCADA alarm screen. However, the SCADA operator screen did not register an alarm because of the malfunctioning sensor switch. Had the operator at the SCADA operator station been properly trained, high wastewater levels in the wet well indicated on the operator screen should have triggered a series of further actions, including checking the alarm screen to determine the source of high wastewater levels in the wet well. The operators at the sewage treatment plant were not properly trained to recognize and to take further steps to respond to the high wastewater levels.
- e. The overflow from the wet well at the Marshall Creek lift station continued for approximately 18 hours until an employee of an electrical contractor noticed it and reported it to the sewage treatment plant operators on December 19, 2009. Once the sewage treatment plant was notified of the incident, AOS responded within 45 minutes and the cleanup crew (another subcontractor) arrived approximately 1.5 hours later. AOS was able to start the standby pump and stop the overflow of sewage. By the time the cleanup contractor arrived, most of the sewage that overflowed had percolated into the dry creek bed and they recovered approximately 300 gallons from a total estimated discharge of 403,000 gallons.
- f. Section D.8 of the SSO Order requires the City to properly manage, operate, and maintain all parts of the sanitary sewer system owned or operated by the City to ensure that the system operators (including

employees, contractors, or other agents) are adequately trained and possess adequate knowledge, skills, and abilities. Information gathered during the investigation of this spill incident and other recent spill incidents within the City indicates that the City failed to properly manage, operate, and maintain all parts of the sanitary sewer system owned by the City. It also failed to ensure that its contractors were adequately trained and possess adequate knowledge, skills, and abilities.

- g. On November 2, 2009, AOS reported pump problems at the Marshall Creek lift station and requested the City's immediate attention. The chief plant operator requested the City to rehabilitate both pumps at the Marshall Creek lift station. As early as May 2008, the City Council had approved approximately \$200,000 to replace and/or rehabilitate the pumps at various lift stations. On November 24, 2009, the City replaced the primary pump at the lift station with a pump which was known to have some mechanical problems. The primary pump, which also had reported problems, was then used as the standby pump. The standby pump was then sent for rehabilitation. The simultaneous failure and/or malfunctions of three different systems (dual pumps, dual power supply system, and level alarm switch) indicate a lack of proper maintenance and operation of the sewer collection and appurtenance systems. The failure of the operating staff to properly monitor, review and to take appropriate action based on the information on the SCADA operator screen also indicates a lack of training.
8. The discharge was into an ephemeral, un-named tributary of San Timoteo Creek, a water of the United States. The Basin Plan designates the following beneficial uses for the Creek: groundwater recharge, water contact recreation, non-contact water recreation, warm fresh water habitat and wildlife habitat.
9. The City violated several provisions of the SSO Order. By discharging untreated wastewater to waters of the United States, it violated Provision C.1 which states, "Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." Provision D.1 states, "The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action." By failing to properly operate and maintain and provide adequate training to its employees and by not ensuring that its contractors are properly trained, the City violated Provision D.8. Beaumont is alleged to have violated Provisions C.1 and D.8 of the SSO Order.
10. Pursuant to CWC §13350(e), the Regional Board may impose civil liability administratively either on a daily basis [per CWC §13350(e)(1)] or on a per gallon basis [per CWC §13350(e)(2)], but not both. The Assistant Executive Officer proposes to impose civil liability per CWC §13350 (e)(2).

11. CWC §13350(e)(2) states that administrative civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged. For the discharge incident described above, the total volume discharged and not recovered was 402,700 gallons. The maximum liability for the violation cited above on a per gallon basis is \$4,027,000 (402,700 gallons X \$10 per gallon = \$4,027,000).
12. CWC §13327 specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>An estimated 402,700 gallons of untreated wastewater (sewage) was discharged from Beaumont's sanitary sewer system to an ephemeral, un-named, tributary to San Timoteo Creek, a water of the United States.</p> <p>The sewage discharged to the tributary has the potential to impact the designated beneficial uses of the San Timoteo Creek by the introduction of bacteria, nutrients, and other pollutants. The nature of the soils in the tributary allowed sewage to be absorbed and percolated before reaching San Timoteo Creek. However, the nutrients and some of the other pollutants in sewage, once deposited in the soil, have the potential to migrate through the soil column into the ground water or be carried by storm water into the Creek and other surface waterbodies. The discharge of sewage also is a threat to public health.</p> <p>Once Beaumont became aware of the discharges at the Marshall Creek lift station (18 hours after its failure), Beaumont responded to the spill and was able to mobilize equipment and personnel to put the lift station back into operation.</p>

B. Culpability	<p>Regional Board staff has alleged in a previously issued administrative civil liability complaint (Complaint No. R8-2009-0068) that Beaumont has failed to develop and implement a comprehensive Sanitary Sewer Management Plan (hereinafter "SSMP") in compliance with the SSO Order. Staff has been working with Beaumont to bring them into compliance with this provision of the SSO Order. It has been alleged that Beaumont's failure to develop this plan, as required by the SSO Order, and its failure to take proactive steps to prevent SSOs and develop a comprehensive operation and maintenance plan has contributed to previous failures of lift stations. Failures of mechanical systems associated with the lift stations could have been prevented, or at least minimized, by proper operation and maintenance of these systems through development and implementation of a SSMP. Provision D.6(i) of the SSO Order requires the Regional Board to consider the City's progress towards developing and implementing the SSMP in any enforcement action.</p> <p>As indicated above, the City also failed to ensure that its contractors were adequately trained. Had AOS employees been properly trained to effectively utilize the SCADA operator screen, the spill could have been prevented or at least minimized.</p> <p>During the previous spill incidents, Regional Board staff had reiterated to the City the need for proper operation and maintenance of its sanitary sewer systems and for providing adequate training to its employees/contractors.</p>
C. Economic Benefit or Savings	<p>Beaumont's decision to not act on a recommendation to repair problematic pump units and replace them with properly sized temporary units contributed to the magnitude of the discharge. However, based on recent information provided by the City, it appears that these savings were insignificant.</p>

D. Prior History of Violations	<p>The Assistant Executive Officer issued Administrative Civil Liability Complaint No R8-2009-0068 on November 19, 2009 to Beaumont due to eight sanitary sewer overflow incidents that discharged sewage into tributaries of San Timoteo Creek. Regional Board staff are working with Beaumont to resolve this Complaint.</p> <p>Beaumont has also violated provisions of the Riverside County Municipal Storm Water Permit (of which they are a co-permittee). The Regional Board issued an administrative civil liability complaint for these violations.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 78 hours investigating this incident. The total cost for staff time is \$11,700 (78 hrsX\$150/hr=\$11,700).</p>
F. Ability to pay	<p>Beaumont is a city of more than 30,000 citizens. Pursuant to Water Code section 13385(k) it is not considered a small community with financial hardship and, therefore, it appears that Beaumont has the ability to pay the proposed administrative civil liability. The Prosecution Team is not in the possession of any information that Beaumont would be unable to pay the proposed liability amount.</p>

13. After consideration of the above factors, the Assistant Executive Officer proposes that civil liability be imposed administratively on Beaumont in the amount of \$111,000 for the violations cited above.

14. This penalty assessment is based on a consideration of the potential for harm from the sanitary sewer overflow event described above. Based on the potential harm from the discharge and the characteristics of the discharge, the Assistant Executive Officer determined that an assessment of \$0.25 per gallon is appropriate. This is based on the fact that all of the discharge percolated into a dry creek bed and there were no identifiable beneficial use impacts. The total assessment based on flow is \$100,675 (402,700 gallonsX\$0.25/gallon=\$100,675).

This amount is then adjusted based on Beaumont's a) culpability, b) the susceptibility of the discharge to cleanup and cooperation with Regional Board staff, and c) history of violations.

As indicated in the table above, Beaumont appears to have had an inordinate number of overflow incidents that suggest a lack of proper operation and maintenance. Based on lack of training and failure to implement an effective operations and maintenance

program, an adjustment factor of 1.1 was applied related to culpability. With regard to the cleanup factor, a 0.75 adjustment factor is used in considering cleanup cooperation, Beaumont's response activities (the City responded immediately upon discovery of the discharge) and the absence of any observable impacts on the beneficial uses from the discharge. With regard to the history of violations factor, the assessment was increased by a factor of 1.2 based on the chronic history of on-going violations that has resulted in the issuing of an earlier administrative civil liability complaint (Complaint No. R8-2009-0068). Applying each of these adjustment factors results in an adjusted final assessment of \$99,668.25 ($\$100,675 \times 1.1 \times 0.75 \times 1.2 = \$99,668.25$).

CWC §13327 also requires consideration of economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. The amount of economic benefit is insignificant so no economic benefit has been assessed for this violation. The costs of investigation and enforcement are considered as one of the "other factors as justice may require". The staff costs (\$11,700) are added to the adjusted amount above, for a total assessment of \$111,368.25 ($\$99,668.25 + \$11,700 = \$111,368.25$). This amount is rounded to the nearest thousand for a final proposed assessment of \$111,000.00.

WAIVER OF HEARING

Beaumont may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$111,000 payable to the State Water Resources Control Board-WDPF in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992 or Chuck Griffin at (951) 782-4996.

4/15/10
Date

Kurt V. Berchtold
Kurt V. Berchtold
Assistant Executive Officer

Exhibit C

1. Project Title: Detection of septic system waste in the groundwater of Beaumont CA using chemical and isotopic tracers

2. Organization Proposing the Project:

Dr. James O. Sickman, Associate Professor of Hydrology, Department of Environmental Sciences, University of California Riverside, Riverside CA 92521

Email: jsickman@ucr.edu; Tel. (951) 827-4552

Dr. Jay Gan, Professor of Environmental Chemistry, Department of Environmental Sciences, University of California Riverside, Riverside CA 92521

Email: jgan@ucr.edu; Tel. (951) 827-2712

3. Project Description: Septic systems are a threat to groundwater quality in the Beaumont, CA area. Septic systems contain a large suite of inorganic and organic substances, some of which have only recently been recognized as having negative effects on human health and the environment. These emerging contaminants can be extremely toxic at low levels and produce effects on the endocrine systems of higher organisms. In the proposed study, samples will be collected from about 25 groundwater wells in and around the City of Beaumont CA, in a synoptic survey. Additional samples (~10) of surface water in the region (urban and natural streams, agricultural drainage) and septic fluids will be co-collected. The samples will be used to determine concentrations of chemical and isotopic constituents that are diagnostic of the presence of septic wastewater in groundwater. These constituents include major cations (Ca, Mg, Na, K, B), major anions (Cl, SO₄, Br), dissolved organic carbon (DOC), nutrients (NH₄, NO₃, total N, dissolved organic N), isotopes of nitrate ($\delta^{15}\text{N}$ and $\delta^{18}\text{O}$) and emerging pharmaceutical, pesticide, and food additive contaminants. Using these diagnostic tracers and results modeling of groundwater movement using MODFLOW 96, the investigators will assess the threat of septic systems to groundwater quality in the study region.

4. Total Project Cost: \$105,450 (see attached task budget)

5. Project schedule: Start Date: June 10, 2010. End Date August 10, 2011

	Jun '10	Jul '10	Aug '10	Sep '10	Oct '10	Nov '10	Dec '10	Jan '11	Feb '11	Mar '11	Apr '11	May '11	Jun '11	Jul '11	Aug '11
Task 1: Publication review	X	X													
Task 2: Water sampling			X	X	X										
Task 3: Inorganic analyses				X	X	X	X								
Task 4: Isotope analyses				X	X	X	X	X	X	X					
Task 5: Organic analyses				X	X	X	X	X	X	X	X				
Task 6: Modeling.									X	X	X	X			
Task 7: Report													X	X	X
Task 8 Project Management	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

6. Expected Products: Products of the study include a database on groundwater quality in and around the City of Beaumont, CA, including measurements of emerging contaminants and stable isotope values of NO₃. A final report, which synthesizes groundwater modeling with new chemical data will be produced for the Regional Board.

Exhibit C**Task Budget**

Task	Description	Cost
1	Review of existing publications on groundwater resources in Beaumont region. Selection of wells and surface water sampling sites. Develop a Sampling and Analysis Plan and a Quality Assurance Project Plan.	\$5,000
2	Water sampling. Travel between Riverside and Beaumont for collection of ~40 water samples. Sample containers, filters, coolers, dry ice etc.	\$5,023
3	Analysis of ~40 water samples for: Cations (Ca, Mg, Na, K, B), anions (Cl, SO ₄ , Br), dissolved organic carbon (DOC), nutrients (NH ₄ , NO ₃ , total N, dissolved organic N),	\$6,000
4	Analysis of 40 water samples for NO ₃ isotopes ($\delta^{15}\text{N}$ and $\delta^{18}\text{O}$) using microbial denitrifier method	\$5,250
5	Analysis of ~40 water samples for emerging contaminants: (acetaminophen, diuron, bisphenol-A, caffeine, carbamazepine, DEET, 17 α -ethynylestradiol, gemfibrozil, ibuprofen, sulfamethoxazole, TCEP	\$30,483
6	Modeling of groundwater using MODFLOW 96	\$16,000
7	Report preparation	\$13,940
8	Project Management and Administration	\$10,000
	Total Direct Costs	\$91,696
	Indirect costs (15% of direct costs)	\$13,754
	Total Project Costs	\$105,450